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**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF PUBLIC WELFARE**  
**OFFICE OF LEGAL COUNSEL**  
**INDEPENDENT REGULATORY REVIEW COMMISSION**

**DATE:** September 20, 1999

**SUBJECT:** DPW Regulation 14-445 (#2043)  
 Medical Assistance Estate Recovery  
 Follow up Response to Question 20

**ORIGINAL:** 2043  
**MCGINLEY**  
**COPIES:** Sandusky  
 Markham  
 Smith  
 Wilmarth  
 Wyatte

**TO:** James M. Smith  
 Regulatory Analyst  
 Independent Regulatory Review Commission

**FROM:** Ruth O'Brien *POB*  
 Senior Assistant Counsel

I am writing to follow up on DPW's response to Question 20 raised in the list of questions faxed to DPW by IRRC on September 13, 1999. I am also responding to a verbal follow up question raised by Niles Schore, Esquire, regarding authorization of personal representatives to enter mortgages against real estate pursuant to proposed Section 258.7(c)(1).

**Section 258.7 Postponement of collection.**

**Question 20:** In subsection (c), how is a security interest perfected against smaller items? How are the items appraised? How were the \$10,000 and \$50,000 limits established?

**Answer:** Security interests are generally perfected against smaller property by filing in accordance with the procedures of the Uniform Commercial Code. *See* 13 Pa.C. S. Section 9302. It is the responsibility of the personal representative to secure an appraisal of property if a question arises as to whether the asset is worth enough to be protectable. With respect to how the Department established the \$10,000 and \$50,000 limits, we note that the Department recognizes the inherent difficulties in dealing with liens on personal property because of problems associated with keeping track of and collecting from such liens. This is especially so with respect to depreciable personal property, such as a car, which may have very little value at the time of the death of the surviving spouse or disabled or blind child. We do not believe, however, that Federal law allows us to ignore personal property of significant value which is part of the estate. (*See* HCFA, State Medicaid Manual, 3810.B.1, which provides: "At a minimum, you must include all real and personal property and other assets included within the individual's estate as provided in your State probate law.") Accordingly, we established the dollar limits of \$10,000 and \$50,000 because those were the largest dollar limits that we felt we could justify to the Federal government on a cost-effectiveness rationale.

In addition, Niles Schore raised another question as a follow up to question 20.

Proposed section 258.7(c)(1) provides that if the decedent's estate contains real estate, the personal representative will be deemed to have complied with his responsibilities to protect the Department's claim during the postponement period if the personal representative causes a mortgage or other recorded encumbrance to be placed against the real estate in favor of the Department. Mr. Schore inquired whether court approval is required under the Probates, Estates and Fiduciaries Code to allow the personal representative to enter a mortgage against real property that is required to be protected during the postponement period. The Department believes that the PEF Code is not clear on this point. The PEF Code gives the personal representative the power to sell realty without court approval, and, as a result, in some counties, the practice is that the power to sell includes the power to mortgage. See 20 Pa.C. S. 3351. However, the PEF Code also has a specific provisions which says that the Court can authorize a mortgage if the personal representative lacks power to do so. See 20 Pa.C. S. 3353. DPW's rationale for requiring mortgages is to allow the personal representative to protect DPW's interest while closing out the estate. If mortgages are not used, there is no way to comply with Federal law unless the estate is kept open until the surviving spouse dies or the minor child reaches age 21. In the case of a disabled or blind child, the estate would have to be kept open until the death of the disabled or blind child.

I hope that this response is helpful. If I may be of further assistance, please do not hesitate to contact me.

cc: Mary Wyatte, Esquire  
Niles Schore, Esquire  
Scott Johnson  
Sandy Bennett  
Melanie Hauck  
Jean Graybill, Esquire  
Kelly Isenberg, Esquire

bcc: Chuck Jones, DPW  
Ron Hill, DPW  
Tom Vracarich